

General Information Letter: Nexus determinations are beyond the scope of letter rulings.

January 23, 2001

Dear:

This is in response to your letter of November 13, 2000 in which you request a private letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (*2 Ill. Adm. Code 1200*). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you wrote:

We write with regard to a corporate client we have in Pennsylvania engaged in business in a number of states. The corporation is a mail consolidator and also charges certain of its customers for the authorized use of a discount postage license. Frequently, the nature of service provided to each customer varies and so we have tried to provide you with as much detailed information as possible in order that you may make a determination as to our client's' status in your state.

Currently, our client has some Illinois based customers to whom the use of the postal license is granted. The license is registered to our client at its Pennsylvania address and the only physical contact with these customers is the initial setup and training (a maximum two-day affair). Access to the discounted postage is achieved through an Internet site from the customer's' location.

Our client meets prospective customers via three main avenues. Firstly, company representatives attend four regional trade shows each year in order to promote their services. Secondly, the company's name is registered on a list of postal consolidators maintained by the post office. And, finally, existing customers frequently promote the company to prospective new customers.

Given that we are unfamiliar with the different state tax laws, and we have thus far been unable to obtain satisfactorily definitive guidelines in this matter, we should be grateful if you would please provide us with a written confirmation of whether the above-described circumstances create nexus in your state. It would also undoubtedly prove helpful to have a synopsis of your state's tax filing requirements if you are able to fulfill such a request. Whilst tax booklets may well be useful, we are looking for specific guidance on the filing obligations our client has for sales, franchise, and income taxes (or those that apply).

A sort facility will likely be opening in early 2001 in Illinois, and it is assumed that at that time the question of nexus will be moot. However, in the event that nexus is not created by the existing setup, we should be grateful for your confirmation.

DISCUSSION

In answer to your letter, it is not within the scope of a general information letter to determine whether a taxpayer has nexus with the state of Illinois. Such a determination can only be made in the context of an audit wherein the auditor would have full access to all pertinent information. Rather, a general information letter is appropriate for discussing general aspects of Illinois law. Accordingly, I can provide you with a general discussion of the law in Illinois.

Illinois law determines "doing business" as the prevailing principles of jurisprudence under the commerce and due process clauses of the US Constitution. The leading case in the area is *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), which found that a state could not tax a business whose only activity within a state is by mail order. Some physical presence is necessary and a taxpayer must purposefully avail itself of an economic market before a state could exert jurisdiction over a taxpayer for taxing purposes. However, subject to the limits of *Quill* and PL 86-272 a state is allowed to tax someone if it so chooses. The providing of services does not qualify for protection under PL 86-272. But, occasional visits to the state would probably satisfy the commerce and due process clauses. In the New York case of *Orvis v. Tax Appeals Tribunal*, 86 N.Y.2d 165, 654 N.E.2d 954 (1995), the court found that four visits to nineteen customers in one year was enough to allow the state to tax a Vermont wholesaler.

Concerning your situation, the Department has not promulgated any regulations concerning nexus in the context of internet service. Therefore, it is not possible to give you an answer on this topic without examining your entire tax records. Similarly, as concerns the promotion of your company by existing customers this can at times lead to nexus depending on the structure of the relationship and the extent of operations. For example, is it a formal program? Do customers receive incentives or pay for gaining new clients? Do customers distribute catalogues, pamphlets, and so on? All of these questions are important in gauging the level of presence in the state.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

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